

**Business Associate Agreement Between  
(Name of TennCare Participating MCO) and  
(Name of Independent Reviewer)**

**CONTRACT** : Independent Review Services per Tenn. Code Ann.§ 56-32-226

**TERM**: *(Begin and End Dates)*

**SERVICE DESCRIPTION**: *(Provide Description of Contract Services)*

This Agreement is effective upon full execution, and made available in reference to Health Insurance Portability and Accountability Act (HIPAA) contract language contained in Article 5 of the Independent Review Contract Agreement dated ( *Date of Agreement*) by and between (*Name of Contractor*) ("Business Associate") and (*Name of TennCare Participating MCO*) ("Covered Entity").

Covered Entity and Business Associate mutually agree to modify the Independent Review Contract Agreement to incorporate the terms of this Business Associate Agreement to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-164) and any applicable state privacy laws as provided under Article 5 of the Independent Review Contract.

**I. Definitions**

Catch-all definition: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule [45 CFR §164].

(a) Business Associate. "Business Associate" shall mean [Name of Business Associate/Independent Reviewer].

(b) Covered Entity. "Covered Entity" shall mean [Name of TennCare Participating MCO].

(c) "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(d) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(e) Protected Health Information. "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

(g) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

## II. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law or as otherwise permitted in writing by [Name of TennCare participating MCO].

(b) Business Associate agrees to use appropriate administrative, technical and physical safeguards, in compliance with Social Security Act/1173(d) (42 U.S.C. §1320d-2(d)), 45 C.F.R. §164.530(c) and any other applicable implementing regulations issued by the federal government, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate agrees that it will not provide access to Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, to any person except for (1) employees (2) subcontractors whose identity has been disclosed to the Covered Entity, or (3) other individuals or classes of individuals to whom disclosure has been authorized by the contract or by written consent of the Covered Entity.

(f) Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as

directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual.

(h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity at any reasonable time and in any reasonable manner requested by the Covered Entity. "Covered Entity" includes authorized employees of the Comptroller of the Treasury as well as the State agency that is a party to this agreement. Business Associate also agrees to provide such access to the Secretary of HHS as required by law.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with Section (i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(k) Compliance with Standard Transactions. If Business Associate conducts Standard Transactions (45 C.F.R. Part 162) with or on behalf of Covered Entity, Business Associate will comply by a mutually-agreeable date, but no later than the date for compliance with all applicable final regulations, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162. Business Associate agrees to demonstrate compliance with the Transactions by allowing Covered Entity to test the Transactions and content requirements upon a mutually agreeable date. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that:

- (1) Changes the definition, data condition or use of a data element or segment in a Standard Transaction;
- (2) Adds any data elements or segments to the maximum defined data set;
- (3) Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
- (4) Changes the meaning or intent of the Standard Transaction's implementation specification.

- (1) Chain of Trust. Security of Electronically Exchanged Data: If Business Associate and Covered Entity exchange data electronically, Business Associate will comply and will require any subcontractor or agent involved in the electronic exchange of data to comply with the following in addition to all other provisions of this Agreement:
  - (1) Business Associate shall provide and shall require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate.
  - (2) Business Associate shall implement and maintain, and shall require its agents and subcontractors to implement and maintain, administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Covered Entity and Business Associate, including access to data as provided herein.

### III. Permitted Uses and Disclosures by Business Associate

(a) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate as required for performance of the contract, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(c) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

### IV. Obligations of Covered Entity

(a) Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## V. Term and Termination

(a) Term. The Term of this Business Associate Agreement shall coincide with the Term of the Independent Review Contract as set forth in Article 11 of the Independent Review Contract.

(b) Termination. This Business Associate Agreement may be terminated in the same manner or cause as that provided in Article 12 of the Independent Review Contract.

(c) Effect of Termination. Upon termination of this Agreement or of the contract for any reason, Business Associate shall comply with provisions of Article 12, Section F or section G to turnover all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity to the TennCare Division (a regulatory entity under HIPAA) or another Independent Reviewer who has executed a Business Associate Agreement with the covered entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. Upon termination, cancellation, expiration or other conclusion of this Agreement or of the contract, Business Associate will, as provided in Article 12, Section F and G, turn over to the TennCare Division or another Independent Reviewer who has executed a Business Associate Agreement with the covered entity, all Protected Health Information, including all Protected Health Information in whatever form or medium (including any electronic medium) and all copies of any data or compilations derived from and allowing identification of any individual who is a subject of Protected Health Information. Business Associate will complete such return as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this Agreement. Business Associate will identify any Protected Health Information that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this Agreement, Business Associate will: (1) certify on oath in writing to Covered Entity and the TennCare Division that such return or destruction has been completed; (2) deliver to Covered Entity and the TennCare Division the identification of any Protected Health Information for which return or destruction is infeasible; and (3) certify that it will only use or disclose such Protected Health Information for those purposes that make return or destruction infeasible.

(d) Other Obligations and Rights. Business Associate's other obligations and rights upon termination, cancellation, expiration or other conclusion of this Business Associate Agreement will be those set out in the Independent Review Contract.

#### VI. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996{HIPAA}, Pub. L. No. 104-191. Business Associate shall immediately comply with any amendment to the Privacy Rule and HIPAA upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.

(c) Survival and Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of the Protected Health Information it created or received for or from the Covered Entity will be continuous and survive termination, cancellation, expiration or other conclusion of this Agreement.

(d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

#### **SIGNATURES OF AUTHORIZED REPRESENTATIVES:**

***(NAME OF TENNCARE PARTICIPATING MCO):***

\_\_\_\_\_  
***(Name and Title of Signatory)***

\_\_\_\_\_  
**Date**

***(CONTRACTOR)***

\_\_\_\_\_  
***(Name and Title of Signatory)***

\_\_\_\_\_  
**Date**